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MAIL

DEC - 1 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Danny A. McCall, et al.
Application No. 09/315,962
Filed: May 21, 1999
For: METHOD AND APPARATUS FOR
SIMULTANEOUS CAPTURE OF A
SPHERICAL IMAGE

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the Request for Withdraw of the Notice of Abandonment, filed June 22, 2004, which is being treated as a petition to withdraw the holding of abandonment pursuant to 37 C.F.R. § 1.181(a). No fee is required.

This application was abandoned for failure to file a timely response to the Office communication (Notice of non-responsiveness, paper # 20) mailed July 30, 2003 giving applicant one month or 30 days to submit a complete reply. A Notice of Abandonment (paper # 21) was mailed on April 21, 2004 when no reply to the July 30, 2003 communication was received.

The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the Practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received", 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c), section II. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Notice of Allowance was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Notice of Allowance on the part of the Patent and Trademark Office.

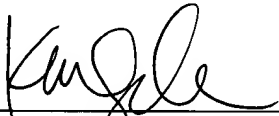
In support of the instant petition, petitioner has stated that the attorney changed law firms from the previous correspondence address of record (Graydon, Head & Ritchey, LLC) to the current address of record (Frost Brown Todd, LLC) on February 10, 2003 but that transfer had no bearing on the failure to receive the Office action; inasmuch as petitioner has submitted a statement stating that the Office action was not received by the practitioner of record and that a search of the file jacket and the docket records of the application produced no evidence that the non-final Office action was received. Petitioner has also submitted evidence, including a statement from the previous law firm of record, stating that the Office action was not received and including copies of their docket records.

In view of the above, there is showing of non-receipt of the Office action at the correspondence address of record at that time. Accordingly, the application was not abandoned in fact.

The petition is **GRANTED**.

Accordingly, the Notice of Abandonment is vacated and the holding of abandonment is withdrawn.

The application file is being forwarded to TC 2600 technical support staff to enter the amendment and response filed with the petition on June 22, 2004. From there, the file will be forwarded to the examiner for appropriate action in due course.



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